

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

United States District Court	District of Maryland
Name (under which you were convicted): Howard Rice	Docket or Case No. 1:04-CR-00323-WDQ
Place of Confinement: LSCI Allenwood	Prisoner No.: 41214-037
UNITED STATES OF AMERICA	Movant (include name under which convicted)
v.	Howard Rice

MOTION

WDQ-12-cv-3648

- (a) Name and location of court that entered the judgment of conviction you are challenging: United States District Court, for the District of Maryland, Baltimore
- (b) Criminal docket or case number (if you know): 1:04-CR-00323-WDQ
- (a) Date of the judgment of conviction (if you know): October 19, 2006
- (b) Date of sentencing: October 19, 2006
- Length of sentence: 360 months
- Nature of crime (all counts): Racketeering, conspiracy to distribute heroin and cocaine; 18 U.S.C. 1962(c) & (d), 21 U.S.C. 841(a)(1), 21 U.S.C. 846
- (a) What was your plea? (Check one)

(1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? _____
- If you went to trial, what kind of trial did you have? (Check one)

Jury ☐ Judge only ☐
- Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes ☐ No ☒

8. Did you appeal from the judgment of conviction? Yes ☐ No ☒

9. If you did appeal, answer the following:

(a) Name of court: _____

(b) Docket or case number (if you know): _____

(c) Result: _____

(d) Date of result (if you know): _____

(e) Citation to the case (if you know): _____

(f) Grounds raised: _____

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☐

If "Yes," answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

(5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: District Court of Maryland, Baltimore

(2) Docket or case number (if you know): L-06-17623

(3) Date of filing (if you know): July 10, 2006

(4) Nature of the proceeding: 28 U.S.C. 2255 petition

(5) Grounds raised: Breach of plea

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☒ No ☐

(7) Result: Sentence vacated

(8) Date of result (if you know): April 24, 2007

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: District Court of Maryland

(2) Docket or case number (if you know): WDQ-08-3107

(3) Date of filing (if you know): November 6, 2008

(4) Nature of the proceeding: 2255 proceeding

(5) Grounds raised: Breach of plea agreement by government

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☒

(7) Result: Denied

(8) Date of result (if you know): June 18, 2009

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☒

(2) Second petition: Yes ☒ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

Did not appeal first petition because my sentence was vacated, which was a favorable ruling. I d

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: PETITIONER WAS SENTENCED UPON MATERIALLY FALSE INFORMATION, IN VIOLATION OF THE 5TH AMENDMENT DUE PROCESS CLAUSE/ACTUAL INNOCENCE OF SENTENCE.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): Petitioner was sentenced to a 30 year prison term and given a 4 point leadership role pursuant to 3BL.1(a) and to more than 150 kilograms of cocaine, both sentencing factors being false. Petitioner pled guilty to said sentencing factors to he would avoid a life sentence based on things he could not prove at the time. On 1/26/11 Eric Clash, one of Petitioner's alleged co-conspirators testified at another individuals sentencing hearing (more than 4 years after Petitioner was sentenced) as to the extent of Petitioner's involvement in drug distribution/conspiracy, and Eric Clash's testimony asserts that Petitioner was culpable for approx. 15 kilograms of cocaine, and that Clash himself was a leader and that he was Petitioner's supplier because Petitioner's cocaine supply dried up for more than 3 years, and that Eric Clash excised Petitioner's supply because he felt that Petitioner was too flashy, and therefore refused to sell Petitioner any cocaine. This testimony shows that Petitioner is actually innocent of leadership/150 kilos.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: The ground was not available to Petitioner because the evidence supporting it was birthed on 1/26/11, or more than 4 years after Petitioner was sentenced. And also because Petitioner waived his right to direct appeal. (Only)

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND TWO: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): _____

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND THREE: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): _____

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND FOUR: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): _____

(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: I have never raised any of the grounds which comprises my instant 2255 because the evidence which my claim(s) are based just arose at Darrell Young's 1/26/11 sentencing, more than 3 years after my statute of limitations period for filing a 2255 expired. The claims which I raise herein were not reasonably available to me when I filed my first 2255, because the evidence supporting such was just birthed in 2011. (See Murray v. Carrier, 477 U.S. 478, 488 (1986) ("The factual or legal basis was not available..."))

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: _____

(b) At arraignment and plea: William B. Ruzpura, Jr., Teresa Whalen

(c) At trial: N/A

(d) At sentencing: Same as above

(e) On appeal: N/A

(f) In any post-conviction proceeding: pro se in all post-conviction proceedings

(g) On appeal from any ruling against you in a post-conviction proceeding: pro se

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

My motion is timely filed pursuant to 28 U.S.C. 2255(f)(4) because the evidence which
comprises my claim was just surrendered in Darnell Young's 2011 sentencing (testimony
of one of my codefendant's which now exonerates me in extensive criminal activity I had
no part in) more than 4 years after I was sentenced, and more than 3 years after my time
for filing a 2255 had expired.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: vacatur of sentence with remand for resentencing with instruction to withdraw 851 Information, vacate 4 point leadership role and adjust drug quantity/specific enforcement of prior 135 month sentence.
or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion Under 28 U.S.C. § 2255 was placed in the prison mailing system on December 10, 2012

(month, date, year).

Executed (signed) on 12/10/12 (date).

Howard Rice
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion. _____

